

# **IME**

## **institute of makers of explosives**

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*The safety and security institute of the commercial explosives industry since 1913*

February 16, 2021

Mr. Brandon Wales  
Acting Director, Cybersecurity and Infrastructure Security Agency  
U.S. Department of Homeland Security  
245 Murray Lane  
Washington, D.C. 20528

### **Re: Docket No. CISA-2020-0014**

Dear Acting Director Wales:

IME respectfully submits the following comments on the above-captioned action.

#### **Interest of IME**

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

Many IME members are subject to the Cybersecurity and Infrastructure Security Agency's (CISA) Chemical Facility Anti-Terrorism Standards (CFATS) program, which directly and superfluously overlaps with the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) regulation of explosive materials. Accordingly, IME members have a direct interest in the subject matter of this notice.

#### **General Comments**

IME appreciates CISA's ongoing review of the CFATS program and applauds the Agency's recognition of a clear overlap between two regulatory programs with the same aim. IME has long sought relief from the duplicative, and therefore unnecessary, oversight of CFATS on ATF regulated explosive materials. We fervently support the proposed solutions laid out in this Advanced Notice of Proposed Rulemaking (ANPRM).

Since 1970, ATF has overseen the manufacture, sale, possession and use of all explosive chemicals on their annual *List of Explosive Materials*. With the onset of the CFATS program, ATF's efforts to secure these chemicals were duplicated, but there has been no corresponding increase in their security. Based on data collected from the U.S. Bomb Data Center's (USBDC) annual Explosive Incident Report, explosives thefts have seen a steady and impressive decrease over the last 30 years due to ATF regulation and industry best practices. Since the beginning of the CFATS program in 2007, that historical rate of decline has not seen a significant change.

On January 21, 2021, the Government Accountability Office (GAO) released a study reviewing the CFATS program and areas of overlap with other chemical security programs<sup>1</sup>.

Unsurprisingly, this study found that most CFATS Risk-Based Performance Standards (RBPS) directly overlap with ATF regulatory requirements for commercial explosives. IME and the commercial explosives industry have long appreciated and supported all government efforts to bolster explosive security. However, CFATS and the associated imposition of overlapping but differently applied requirements does not further that jointly held goal for the 49 chemicals in question.

In addition to the ineffective overlap of regulations, CFATS imposes significant compliance burdens on industry. In 2017, IME conducted an internal CFATS cost case study; among our findings were the following:

- **Member Company 1:** Given two options for compliance for a single facility: (1) infrastructure modifications with an estimated cost of \$500,000 to \$1,000,000 or (2) utilize an alternative process for compliance with an annual cost of \$125,000.
- **Member Company 2:** One-time compliance cost of \$837,400 for a single facility.
- **Member Company 3:** One-time compliance cost of \$433,820 with a recurring annual compliance cost of \$70,400 for a single facility.

IME and our members could better understand these costs if they resulted in a corresponding increase in security, but as all available government data shows, there has been none. The role CFATS plays in the oversight of these 49 chemicals is not that of a barrier to nefarious actors but a barrier to growth and efficiency for those in our industry and a barrier to entry for those who would join our industry.

The removal of these chemicals from Appendix A would not only reduce unnecessary burden on industry but would also allow for the realignment of government resources towards oversight of facilities and materials that continue to present a significant security concern to our nation. Precursor chemical regulation will remain intact should this rule be finalized. Given that, and the data supporting ATF's effectiveness in regulating explosive materials, national security would not be negatively impacted by this action.

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<sup>1</sup> GAO-21-12 <https://www.gao.gov/products/GAO-21-12>

The commercial explosives industry's dedication to safety and security, coupled with ATF's expertise and regulation tailored specifically for commercial explosives, has resulted in an impressive track record of security. The continuation of this ANPRM and its eventual move to a final rule is both an exercise in regulatory rightsizing and a recognition of the impact that industry and government, working in tandem in support of national security, can have. This action is another step forward in strengthening and refining this critical program towards our mutually held goals of strong national security and good government.

## **Conclusion**

IME appreciates the opportunity to submit these comments. Please let me know if you have any questions or we can provide any additional information.

Respectfully Submitted,

A handwritten signature in black ink, reading "Colby J. Sholler". The signature is written in a cursive, flowing style.

Colby J. Sholler  
Director of Government Affairs  
Institute of Makers of Explosives  
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